UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Ilias Manettas et al.
Application Number:	10/551,561
Filing Date:	06/15/2006
Group Art Unit:	3744
Examiner:	Alexis K. Cox
Title:	REFRIGERATION DEVICE AND OPERATING METHOD FOR SAME

Mail Stop Appeal Brief - Patents
Commissioner for Patents
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REPLY BRIEF

This is a reply to the Examiner's Answer mailed June 24, 2010.

In the "Response to Argument" section in the Examiner's Answer, the Examiner continues to reference an external source for a definition of the term "vicinity." Claim terms, however, should be read in light of the specification. It is apparent from the Examiner's reference to extraneous sources that the term "vicinity" is a term of degree. Appellants submit that the intended degree according to the claimed invention should first be determined with reference to the specification. It is clear from the specification (and in fact the claims) that the "vicinity" of the evaporator is defined by reference to the thickness of an ice layer. From the specification and the language in the claims, the "vicinity" encompasses a distance only slightly greater than that of an ice layer formed on the evaporator. Using the Examiner's definition, with reference to the Examiner's Answer, the "vicinity" could encompass a distance exceeding 100 feet (referring to the Examiner's rebuttal to Appellants' reference that

the 10th floor of a building is not in the same "vicinity" to the basement as the claimed temperature sensors are disposed in the "vicinity" of the evaporator). As would be readily apparent to those of ordinary skill in the art, the Examiner's definition of "vicinity" is inconsistent with the subject matter of the claimed invention.

The Examiner further provides that "the definition of 'vicinity' is not, in any *standard* definition, related to the thickness of an ice layer." From the specification, however, it is apparent that the definition of "vicinity" is not intended to embody just any *standard* definition, but rather one that is consistent with the description of the invention.

With reference to the Tilmanis patent, the Examiner contends that the modification proposed in the Office Action "need not be suggested in Tilmanis." This conclusion, however, is inconsistent with the principles of patent law, wherein "to support the conclusion that the claimed invention is directed to obvious subject matter, the reference must expressly or impliedly suggest the claimed invention . . . ." See, *Ex parte Clapp*, 227 USPQ 972, 973 (BPAI 1985). See also MPEP §706.02(j). The Supreme Court in *KSR* stated that "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In Tilmanis, however, as noted previously, the placement of the second thermistor is not arbitrary, and Tilmanis describes its object to periodically sense the temperature of the evaporator coil and the temperature of the storage space of the refrigerator. The proposed modification is thus directly contrary to this objective. Moreover, changing a position of the thermistor 38 could not be accomplished using known methods or techniques to yield predictable results. That is, since it is not readily apparent from Tilmanis how the temperature of the storage space of the refrigerator can be determined by eliminating the thermistor 38 from the storage space, the results of the proposed modification could not be predictable.

With regard to claim 24, the Examiner's Answer still does not address the subject matter defined therein. Claim 24 recites that neither of the temperature sensors is disposed in the inner chamber. Both sensors in Hansen are disposed in respective bores, and channels 35, 36 receive conductors that lead to the temperature sensors.

For at least these reasons and the reasons set forth in the Appeal Brief, reversal of the rejections is respectfully requested.

Respectfully submitted,

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